UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/77
19 December 2001

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF TORTURE AND DETENTION

Report of the Working Group on Arbitrary Detention

GE.01-16381 (E) 230102 250102

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Executive summary

The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42 and entrusted with the investigation of instances of alleged arbitrary deprivation of liberty. The mandate of the Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum-seekers and immigrants.

During the reporting period, the Working Group visited the State of Bahrain at the invitation of the Government. The report on the visit appears in addendum 2 to the present document.

During the same period, the Working Group adopted 31 Opinions concerning 94 persons in 22 countries and Palestine. In 49 cases, it considered the deprivation of liberty to be arbitrary. In the same period, the Working Group registered and transmitted to Governments 36 communications concerning 167 cases.

Also during the period January-November 2001, the Working Group transmitted a total of 79 urgent appeals concerning 897 individuals to 39 Governments and the Palestinian National Authority. Of these urgent appeals 46 were joint actions with other thematic or country-oriented mandates of the Commission on Human Rights. Thirteen Governments concerned informed the Working Group that they had taken measures to remedy the situation of the victims.

The Working Group has continued to develop its follow-up procedure and has sought to engage in continuous dialogue with those countries visited by the Group, in respect of which it had recommended changes of domestic legislation governing detention. Following its thirty-first session, the Committee requested the Governments of Romania and the United Kingdom of Great Britain and Northern Ireland to provide follow-up information on the recommendations resulting from the Group's visit to those countries in September 1998.

In its recommendations in the present annual report, the Group attaches particular importance to the following phenomena:

(a) Imprisonment related to insolvency;

(b) Detention as a means of protection of victims.

Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in resolution 1991/42. Commission resolution 1997/50 spells out the revised mandate of the Group, which is to investigate cases of deprivation of liberty imposed arbitrarily, provided that no final decision has been taken in such cases by local courts in conformity with domestic law, with the standards set forth in the Universal Declaration of Human Rights and with the relevant international instruments accepted by the States concerned. Under this resolution, the Group is also given the mandate to examine issues relating to the administrative custody of asylum-seekers and immigrants.

2. During 2001, the Working Group was composed of the following experts: Mrs. Soledad Villagra de Biedermann (Paraguay), Ms. Leïla Zerrougui (Algeria), Mr. Tamás Bán (Hungary), Mr. Louis Joinet (France) and Mr. Kapil Sibal (India). At its eighteenth session (May 1997), the Group amended its methods of work to the effect that at the end of each mandate the Working Group shall elect a Chairman and Vice-Chairman. Pursuant to this amendment, the Group elected Mr. Sibal as Chairman-Rapporteur and Mr. Joinet as Vice-Chairman. At its twenty-eighth session in September 2000, the Group re-elected Mr. Sibal as Chairman-Rapporteur and Mr. Joinet as Vice-Chairman.

3. The Working Group has so far submitted 10 reports to the Commission, covering the period 1991-2000 (E/CN.4/1992/20, E/CN.4/1993/24, E/CN.4/1994/27, E/CN.4/1995/31 and Add.1-4, E/CN.4/1996/40 and Add.1, E/CN.4/1997/4 and Add.1-3, E/CN.4/1998/44 and Add.1 and 2; E/CN.4/1999/63 and Add.1-4; E/CN.4/2000/4 and Add.1 and 2 and E/CN.4/2001/14 and Add.1). The Working Group's initial three-year mandate was first extended by the Commission in 1994 and further extended in 1997, and in 2000 for another three years.

4. On 26 April 2000, the Commission on Human Rights adopted decision 2000/109 on enhancing the effectiveness of the mechanisms of the Commission. As a result of this decision, the composition of the Working Group will have to be gradually changed prior to the fifty-ninth session of the Commission in 2003. Pursuant to the decision, Mr. Petr Uhl (Czech Republic) resigned from the Working Group after the twenty-ninth session, on 1 December 2000, and was replaced by Mr. Tamás Bán.

5. The Working Group learned with profound sadness of the death, on 6 May 2001, of Mr. Laïty Kama (Senegal), who had been a member of the Working Group since 1991. Mr. Kama was replaced by Ms. Leïla Zerrougui.

6. Mr. Kapil Sibal resigned from the Working Group during the thirty-second session, on 3 December 2001, and had not been replaced as a member of the Group at the time of the adoption of the present report. Mr. Louis Joinet was elected Chairman of the Working Group unanimously on 3 December 2001, after resigning as Vice-Chairman. The Working Group decided to await the appointment of the new expert from the Asian Group before electing the new Vice-Chairman at its thirty-third session.

I. ACTIVITIES OF THE WORKING GROUP

7. The present report covers the period from January to December 2001, during which the Working Group held its thirty, thirty-first and thirty-second sessions.

A. Handling of communications addressed to the Working Group

1. Communications transmitted to Governments

8. During the period under review, the Working Group transmitted 36 communications concerning 167 new cases of alleged arbitrary detention (162 men) involving the following countries (the number of communications and individuals concerned for each country is given in parenthesis): Algeria (1 communication - 2 persons), Australia (1 - 2), China (4 - 7), Colombia (1 - 1), Egypt (1 - 52), Ethiopia (2 - 3), France (1 - 1), Indonesia (1 - 6), Islamic Republic of Iran (1 - 16), Israel (1 - 1), Mexico (1 - 2), Morocco (1 - 1), Myanmar (4 - 14), Nepal (2 - 4), Pakistan (1 - 1), Peru (2 - 2), Qatar (1 - 1), Russian Federation (1 - 1), Sri Lanka (2 - 27), Syrian Arab Republic (1 - 10), United States of America (1 - 1), Uzbekistan (1 - 2), Viet Nam (2 - 2), Yugoslavia (1 - 7) and Palestine (1 - 1). The Working Group also transmitted 79 urgent appeals (see paras. 24-26 below).

9. Of the 25 Governments concerned, 22 provided information on all or some of the cases transmitted to them. These were: Algeria, Australia, China, Colombia, Egypt, Ethiopia, France, Indonesia, Islamic Republic of Iran, Mexico, Morocco, Myanmar, Nepal, Pakistan, Peru, Qatar, Russian Federation, Sri Lanka, United States of America, Viet Nam, Yugoslavia and the Palestinian National Authority.

10. Apart from the above-mentioned replies, the Governments of China, Indonesia and Peru communicated information concerning cases on which the Group had already adopted opinions (see paras. 21 and 22 below).

11. With regard to communications concerning the Syrian Arab Republic (10 persons) and Myanmar (1 person), the 90-day deadline had not yet expired when the present report was adopted.

12. A description of the cases transmitted and the contents of the Governments' replies will be found in the relevant Opinions adopted by the Working Group (E/CN.4/2002/77/Add.1).

13. Concerning the sources which reported alleged cases of arbitrary detention to the Working Group, of the 167 individual cases submitted by the Working Group to Governments during the period under consideration, 63 were based on information communicated by local or regional non-governmental organizations (NGOs), 78 on information provided by international NGOs in consultative status with the Economic and Social Council, and 26 by private sources.

2. Opinions of the Working Group

14. During its three 2001 sessions, the Working Group adopted 31 Opinions concerning 94 persons in 22 countries and Palestine. Some details of the Opinions adopted during those sessions appear in the table hereunder and the complete texts of Opinions 1/2001 to 18/2001 are reproduced in addendum 1 to the present report. The table also provides information about 13 Opinions adopted during the thirty-second session, details of which could not, for technical reasons, be included in an annex to this report.

15. Pursuant to its methods of work (E/CN.4/1998/44, annex I, para. 18), the Working Group, in addressing its Opinions to Governments, drew their attention to Commission resolutions 1997/50 and 2000/36 requesting them to take account of the Working Group's Opinions and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they had taken. On the expiry of a three-week deadline the Opinions were transmitted to the source.

Opinions adopted during the thirty, thirty-first and thirty-second sessions of the Working Group

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
1/2001	Uzbekistan	No	Manuvar Hasanov Ismail Hasanov	Detention arbitrary, category III
2/2001	United States of America	Yes	Waynebourne Clive and Anthony Bridgewater	Detention not arbitrary
3/2001	Indonesia	Yes (received after the adoption of the Opinion)	Shauket Ali Akhtar, Daniel Attah-Gyasi, Krustiono Basuki, Miladin Vucetic, Zhang Chang You and Johny Erumbanath Antony	Detention arbitrary, category III
4/2001	Viet Nam	No	Thich Huyen Quang	Detention arbitrary, category II
5/2001	Nepal	No	Khrishna Sen	Detention arbitrary, categories I and III
6/2001	Yugoslavia	Yes	Vladimir Nikolic and Xhevat Podvorica	Cases filed (para. 17 (a) of the Working Group's methods of work - persons released)
7/2001	China	Yes	Tohti Tunyaz	Detention arbitrary, category II
8/2001	China	Yes (after the adoption of the Opinion)	Jiang Qisheng	Detention arbitrary, category II
9/2001	Qatar	Yes	Abdul Rahman Amair and Al-Noaimi	Case filed (para. 17 (a) of the Working Group's methods of work - person released)
10/2001	Peru	Yes	José Victoriano and Acevedo Orbegoso	Case filed (para. 17 (a) of the Working Group's methods of work - person released)

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
11/2001	Viet Nam	Yes	Thich Quang Do	Detention arbitrary, category II
12/2001	Myanmar	Yes	Paw Oo Tun	Detention arbitrary, categories I and II
13/2001	Myanmar	Yes	Aye Tha Aung, Cin Shing Thang, Do Htaung, Duwa Zaw Aung, Khun Myint Tun, Kyin Thein, Min Soe Lin, Saw Naing Naing, Saw Mra Aung, Saw Oo Rah and Toe Po	In seven cases (Aye Tha Aung, Do Htaung, Khun Myint Tun, Min Soe Lin, Saw Naing Naing, Saw Oo Rah and Toe Po), detention arbitrary, category II In four cases (Duwa Zaw Aung, Cin Shing Thang, Saw Mra Aung and Kyin Thein), the cases were filed (para. 17 (a) of the Working Group's methods of work - persons released)
14/2001	Russian Federation	Yes	Igor Sutyagin	Detention not arbitrary
15/2001	Australia	Yes	Marco Pasini Beltrán and Carlos Cabal Peniche	Detention not arbitrary
16/2001	Colombia	Yes	Francisco Caraballo	Case provisionally filed (para. 17 (d) of the Working Group's methods of work - not enough information)
17/2001	Peru	Yes (received after adoption of the Opinion)	Elmer Salvador and Gutiérrez Vásquez	Detention arbitrary, category III
18/2001	Mexico	Yes	Rodolfo Montiel Flores and Teodoro Cabrera García	Detention arbitrary, category III
19/2001	Nepal	Yes	Yuburaj Ghimerey, Binod Raj Gyawali and Kailash Sirohija	Cases filed (para. 17 (a) of the Working Group's methods of work - persons released)
20/2001	China	Yes	Wanxing Wang	Detention arbitrary, category II
21/2001	Sri Lanka	Yes	Chinniah Atputharajah, Krisshnaswamy Ramachandran, Rasaratnam Punchalingam, Kanapthy Subramaniam, Thraiswamy Muthuswamy, Thambiah Kandaswamy, Ramiah Subramaniam, Sinnapu Daniud, Kathirgamu Shanmuganathan, Namasivayam Aathimulam, Arumagam Kanagaratnam, Ramiyah Gopalaswamy and Khartigesu Sivalingam	Six cases filed (para. 17 (a) of the Working Group's methods of work - persons released): Chinniah Atputharajah, Rasaratnam Punchalingam, Thuraiswamy Muthuswamy, Ramiah Subramaniam, Sinnapu Daniud and Karthigesu Sivalingam. Three cases of detention not arbitrary: Kathirgamu Shanmuganathan, Thambiah Kandaswamy and Ramiyah Gopalaswamy. Four cases of detention arbitrary, category III: Krisshnaswamy Ramachandran, Kanapthy Subramaniam, Namasivayam Aathimulam and Arumagam Kanagaratnam

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
22/2001	Ethiopia	Yes	Bernahu Nega and Mesfin Woldemariam	Cases filed (para. 17 (a) of the Working Group's methods of work - persons released)
23/2001	Israel	No	Kahed Jaradat	Detention arbitrary, category III
24/2001	Sri Lanka	Yes	Edward Anton Amaradas, Gajarnoghan, Thanigasalam Pillai Nandanan, Kadiravelupillai Sivamogan, Selvanayagam Suganthan, Moothuthamby Uthayakumar, Mrs. Navajothi Sinnarasa, Sinnathambi Kamalanadan, Krisnapillai Pavalakeshan, Thambinakayam Sribalu, P. Selvaraja, S. Senthurajah, Sri Arasaretnam Senthinathakurukkal and Krishnapillai Perinpam	Four cases filed (para. 17 (a) of the Working Group's methods of work - persons released): Thanigasalam Pillai Nandanan, Kadiravelupillai Sivamogan, E.A. Amaradas and Selvanayagam Suganthan. Four cases filed (para. 17 (d) of the Working Group's methods of work - not enough information): Gajarnoghan, M. Uthayakumar, K. Pavalakeshan, T. Sribalu. Five cases, detention arbitrary, category III: Mrs. Navajothi Sinnarasa, S. Kamalanadan, Sri Arasaretnam Senthinathakurukkal and K. Perinpan.
25/2001	Pakistan	Yes	Ayub Masih	Detention arbitrary, category III
26/2001	France	Yes	Guy Mariani	Case filed (para. 17 (a) of the Working Group's methods of work - person released)
27/2001	Morocco	Yes	Mustapha Adib	Detention arbitrary, category III
28/2001	Algeria	Yes	Abassi Madani and Ali Benhadj	Detention arbitrary, category III
29/2001	Ethiopia	Yes	Gebissa Lemessa Gelelcha	Case filed (para. 17 (a) of the Working Group's methods of work - person released)
30/2001	Islamic Republic of Iran	Yes	Ezzatollah Sahabi, Hassan Youssefi-Echkevari, Mohammad Makeki, Habibollah Peyman, Mohammad Bestehnegar, Massoud Pedram, Ali-Reza Rajai, Hoda Rezazadeh-Saber, Mohammad-Hossein Rafiee, Reza Raïs-Toussi, Taghi Rahmani, Mahmoud Omrani, Reza Alidjani, Morteza Kazemian, Mohammad Mohammadi-Ardehali and Saïd Madani	Seven cases filed (para. 17 (a) of the Working Group's methods of work - persons released): Mohammad Bestehnegar, Morteza Kazemian, Mohammad Maleki, Mohammad Mohammadi Ardehali, Masoud Pedram, Hossein Rafiee and Ali Reza Rajai. Nine cases, detention arbitrary, category II: Ezzatollah Sahabi, Hassan Youssefi-Echkevari, Habibollah Peyman, Hoda Rezazadeh-Saber, Reza Raïs-Toussi, Taghi Rahmani, Mamoud Omrani, Reza Alidjani and Saïd Madani.
31/2001	Palestinian National Authority	Yes	Jaweed al-Ghussein	Detention arbitrary, category I

Note: Opinions 19/2001 to 31/2001, adopted during the thirty-second session, could not be reproduced as an annex to this report; they will be reproduced as an annex to the next annual report.

3. Government reactions to Opinions

16. The Working Group received information from the Governments of China, Colombia, Mexico and Turkey following the transmittal of its Opinions to them. In addition, observations were received from the Governments of Indonesia and Peru after the adoption of Opinions 3/2001 and 17/2001, respectively.

17. The Government of the People's Republic of China, by submission of 26 June 2001, challenged the conclusions of the Working Group's Opinions 7/2001 (China) and 8/2001 (China). Regarding the adoption of Opinion 8/2001, the Government of China considered that it was inappropriate for the Working Group to adopt an opinion in a hasty manner and on the basis of unverified allegations before receiving the Government's reply. With a view to providing accurate and detailed information and adopting a responsible approach both to the Working Group and to the person who has complained, investigations sometimes take longer than usual, making it impossible to reply by the deadline. The Government had obtained details concerning this case after repeated inquiries and verifications with all the law-enforcement organs concerned.

18. In relation to the adoption of Opinion 7/2001, the Government pointed out that it had provided all the details of the detainee's criminal acts, the proceedings relating to his trial and his appeal, the evidence relating to the case and the legal basis for his sentence. It was regrettable that the Working Group had deemed the case to be one of arbitrary detention based on the unfounded suspicion of the so-called "source". Mr. Tohti Tunyaz was convicted not for writing academic papers - the various documentary materials involved in the case were by no means "purely scientific" as asserted by the University of Tokyo, and the defendant himself had admitted all the criminal facts. In conclusion, the Government considered that Opinions 7/2001 and 8/2001 were totally wrong and advised that it had decided to express its dissatisfaction and regret over them. It hoped that the Working Group would correct its wrong decisions and would faithfully reflect China's position in its report.

19. By submission of 13 November 2001, the Government of Mexico advised the Working Group, in connection with Opinion 18/2001 (Mexico), that the President of the Republic had ordered that Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García be released immediately. They had left the Iguala prison in the State of Guerrero on 8 November 2001 and were now living at liberty.

20. The Government of Turkey, by submission of 10 January 2001, in connection with the adoption of Opinion 22/2000 (Turkey), advised that Ms. Hüda Kaya had been released in accordance with a decision dated 30 November 2000 adopted by the relevant court. The Government added that the trial was going on.

21. After the adoption on 16 May 2001 of Opinion No. 3/2001 (Indonesia), the Government of Indonesia, by submission of 29 August 2001, advised the Working Group that Mr. Shaukat Ali Akhtar had been brought to trial on 9 January 2001 and proceedings had commenced at the courthouse in Surabaya. The trial was ongoing and a verdict had yet to be reached. Mr. Shaukat had been kept in police custody in East Java for a period of 36 days and not 60 as mentioned by the Working Group. In addition, Mr. Shaukat's detention status had

been modified to that of "city arrest", i.e. confined to the city of Surabaya, East Java, being forbidden to leave Indonesia. According to the police and his lawyer, he was now residing at the Novotel Apartments in Surabaya.

22. After the adoption on 14 September 2001 of Opinion 17/2001 (Peru), the Government of Peru stated that Mr. Elmer Salvador Gutiérrez Vásquez had been sentenced by the Supreme Military Court to life imprisonment for the offence of treason under Decree-Law No. 25,659. After various terrorist attacks his fellow defendants were charged with the offence of terrorism and tried in the ordinary courts in conformity with Decree-Law No. 25,475. Mr. Gutiérrez Vásquez was never tried in an ordinary court.

23. In a note verbale of 30 November 2001, the Permanent Mission of Colombia to the United Nations Office at Geneva informed the Working Group of the progress achieved and difficulties encountered in complying with the recommendations made in various Opinions of the Group (Decision 58/1993; Decision 26/1994; Decision 15/1995; Decision 32/1996; Opinion 25/1999 and Opinion 16/2001). As regards Decision 26/1994, the Government of Colombia stated that, on 21 March 1995, the National Court had ordered the immediate release of Ernesto Santani Mejía, Guillermo Antonio Brea Zapata, Francisco Elías Ramos and Manuel Terrero Pérez, citizens of the Dominican Republic. The Government pointed out that if in the past the Group had considered any case relating to arbitrary detention in Colombia, it had been because of problems of communication or differences in the interpretation or scope of the laws. Ordinary justice was applied in Colombia solely and exclusively under the criteria laid down in the Constitution, the laws and Colombian jurisprudence and doctrine, which is rooted in the tradition of Roman-Germanic law.

4. Communications giving rise to urgent appeals

24. During the period 1 January 2001-30 November 2001, the Working Group transmitted 79 urgent appeals to 39 Governments (as well as to the Palestinian Authority) concerning 897 individuals. In conformity with paragraphs 22 to 24 of its methods of work, the Working Group, without prejudging whether the detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported, and appealed to it to take the necessary measures to ensure that the detained persons' rights to life and to physical integrity were respected. When the appeal made reference to the critical state of health of certain persons or to particular circumstances, such as failure to execute a court order for release, the Working Group requested the Government concerned to take all necessary measures to have the persons concerned released.

25. During the period under review, urgent appeals were transmitted by the Working Group as follows (the number of persons concerned is given in parentheses): 10 appeals to the Democratic Republic of the Congo (401); 8 appeals to Malaysia (35); 4 appeals to Indonesia (28); 4 appeals to the Sudan (29, including three women), 4 appeals to Turkey (27); 3 appeals to the People's Republic of China (5); 3 appeals to Ethiopia (7); 3 appeals to Egypt (61); 3 appeals to Israel (3); 2 appeals to Algeria (3); 2 appeals to Eritrea (16); 2 appeals to the Islamic Republic of Iran (17); 2 appeals to Nepal (4); 2 appeals to Sri Lanka (3); 2 appeals to the United Arab Emirates (2); 2 appeals to Uzbekistan (3); 1 appeal to Argentina (1); 1 appeal to Australia (2); 1 appeal to Bangladesh (1); 1 appeal to Cameroon (5); 1 appeal to Cuba (1);

1 appeal to Gambia (1); 1 appeal to Honduras (24); 1 appeal to Jordan (1), 1 appeal to Lebanon (150); 1 appeal to Mauritania (2); 1 appeal to Mexico (3); 1 appeal to Morocco (32, including 13 children), 1 appeal to Pakistan (1); 1 appeal to the Republic of Korea (7); 1 appeal to the Russian Federation (1); 1 appeal to Saudi Arabia (1); 1 appeal to the Syrian Arab Republic (10); 1 appeal to Tanzania (5); 1 appeal to Togo (1); 1 appeal to Tunisia (1); 1 appeal to Turkmenistan (1); 1 appeal to the United States of America (1); and 1 appeal to the Palestinian Authority.

26. Of these urgent appeals, 46 were appeals issued jointly by the Working Group and thematic or geographical special rapporteurs. These were addressed to the Governments of Bangladesh, Cameroon, Democratic Republic of the Congo (8), China, Cuba, Egypt (3), Eritrea, Ethiopia (2), Gambia, Honduras, Indonesia (3), the Islamic Republic of Iran, Israel (2), Lebanon, Malaysia (4), Mexico, Morocco, Nepal (2), the Republic of Korea, the Russian Federation, Sri Lanka (2), the Sudan (3), the United Arab Emirates, the United Republic of Tanzania, the United States of America and Uzbekistan.

27. The Working Group received replies to the urgent appeals addressed to the Governments of the following countries: Australia, China (reply to two actions), Cuba, Democratic Republic of the Congo (reply to one action), Egypt (reply to one action), Lebanon, Malaysia (reply to three actions), Mexico, Nepal (reply to one action), Pakistan, the Republic of Korea, Togo and Turkey (reply to three actions). In some cases it was informed, either by the Government or by the source, that the persons concerned had been released, in particular in the following countries: Egypt (the Government advised the Working Group that Mr. Farid Zahran had been released on bail of 5,000 Egyptian pounds); Lebanon (the Government reported that a considerable number of the persons mentioned in the urgent appeal had been released on bail); Malaysia (the Government reported that Mr. Khairul Anuar Ahmad Zainuddin and Mr. Mohamad Fuad Mohd Ikhwan were released unconditionally on 16 and 28 July 2001 respectively, and that Mr. Noor Ashid Sakib had been placed under restriction in his own district of residence); Nepal (the Government reported that nine persons arrested in December 2000 in Bhurungkhel were released by the court on bail); and Turkey (the Government advised the Working Group that eight persons, including two women arrested in July 2001 on the grounds of aiding and abetting the PKK, had been released). In other cases (relating to China, the Democratic Republic of the Congo, Mexico, Nepal, the Republic of Korea and Togo), the Working Group was assured that the detainees concerned would receive fair trial guarantees. The Working Group wishes to thank those Governments which heeded its appeals and took steps to provide it with information on the situation of the persons concerned, especially the Governments which released those persons. The Group notes, however, that only 22.6 per cent of its urgent appeals were replied to and consequently invites Governments to increase their cooperation under the urgent action procedure.

28. In addition to the above replies to urgent appeals, the Working Group received replies from the Governments of China, Colombia, Egypt, Mexico, Nepal, Saudi Arabia, the Sudan, Togo and Ukraine in respect of urgent appeals which had been addressed to these Governments in the course of 2000 and which had already been included in the Group's annual report for 2000 (E/CN.4/2001/14, paras. 55 to 59). The Working Group equally wishes to thank these Governments for their replies. The Group was thus informed of the release of Mr. Luis Gabriel Caldas León in Colombia.

B. Country missions

1. Visits scheduled

29. The following visits have been scheduled for the forthcoming year (2002):

(a) Belarus. During the fifty-first session of the Sub-Commission, the Permanent Representative of Belarus to the United Nations Office at Geneva declared that the Government of Belarus would invite the Special Rapporteur on the independence of judges and lawyers and the Working Group on Arbitrary Detention to visit the country, and that at least one of the visits would take place before the fifty-second session of the Sub-Commission. During the Group's twenty-sixth session, the Group was informed that the Government of Belarus would invite the Working Group in 2001. Further consultations with the Permanent Mission of Belarus to the United Nations Office at Geneva took place on 13 September 2000, 29 November 2000 and 17 May 2001. By letter dated 4 December 2001, Mr. Vladimir Malevich, Deputy Permanent Representative of the Republic of Belarus to the United Nations Office at Geneva, informed the Chairman of the Working Group that the issue of the organization of the Working Group's visit to Belarus during the first half of October 2002 was under consideration by the competent authorities of his Government and that the final dates of the visit would be agreed upon through the diplomatic channels;

(b) Australia. Pursuant to paragraph 4 of Commission resolution 1997/50, the Working Group initiated consultations with the Permanent Mission of Australia to the United Nations Office at Geneva in mid-1998, with a view to conducting a mission to Australia to examine the issue of administrative custody of asylum-seekers in that country. Agreement in principle for such a visit was obtained from the Government of Australia towards the end of 1999 and the Group had planned to visit Australia in the second half of May 2000. By letter of 2 May 2000, the Government informed the Group that this date was not convenient. In May 2001, the Working Group sought information on other proposed dates for its visit, which had already been agreed to in principle. Further consultations with the Permanent Mission of Australia to the United Nations Office at Geneva took place during the year.

2. Follow-up to country visits of the Working Group

30. By resolution 1998/74, the Commission on Human Rights requested those responsible for the Commission's thematic mechanisms to keep the Commission informed about the follow-up to all recommendations addressed to Governments in the discharge of their mandates. In response to this request, the Working Group decided, in 1998 (see E/CN.4/1999/63, para. 36), to address a follow-up letter to the Governments of the countries it visited, together with a copy of the relevant recommendations adopted by the Group and contained in the reports on its country visits. In 1999, the Group discussed the modalities of its follow-up activities and adopted a procedure under which it will systematically request the Governments of countries visited by the Group to inform it of initiatives the Governments have taken pursuant to the Group's recommendations.

31. Given its heavy workload, the Working Group has staggered its follow-up activities in respect of those countries it has visited. Priority was given to follow-up on recommendations

contained in the reports on the Group's first country visits. Accordingly, in October 1999, letters were addressed to the Governments of Viet Nam, Nepal and Bhutan, with a view to obtaining information from the Governments concerned on the implementation of the recommendations contained in the Group's reports on its visits to these countries (E/CN.4/1995/31/Add.4, E/CN.4/1997/4/Add.2 and E/CN.4/1997/4/Add.3 respectively). A detailed follow-up reply was received from the Government of Bhutan (see annual report for 1999, E/CN.4/2000/4, paras. 44 to 47).

32. As no replies were received from the Governments of Nepal and Viet Nam, reminders were addressed to them by letters dated 29 September 2000. Letters with requests for follow-up information were also addressed, on 29 and 30 September 2000 respectively, to the Governments of Peru and Indonesia, and on 29 October 2001, to the Governments of Romania and the United Kingdom of Great Britain and Northern Ireland requesting information on such initiatives as the authorities might have taken to give effect to the recommendations contained in the Group's report to the Commission on Human Rights on its visits to these countries in 1998 and 1999 (E/CN.4/1999/63/Add.2, E/CN.4/2000/4/Add.2, E/CN.4/1999/63/Add.4 and E/CN.4/1999/63/Add.3 respectively).

33. The Working Group visited Peru from 26 January to 6 February 1998 at the invitation of the Peruvian Government. Following its visit, the Group made various recommendations in its report on the mission to Peru (E/CN.4/1999/63/Add.2). By a letter dated 28 November 2001, the Peruvian Government replied to the Group's request about follow-up to its recommendations and transmitted the following information on the 52 cases (76 persons) which had been submitted to it:

> 34 persons (29 cases) have been released following a judicial decision or pardon (indulto):
>
> Wilfredo Estanislao Saavedra Marreros (Opinion 7/1992); Miguel Fernando Ruiz Cornejo (Opinion 42/1993); Julio Rondinel Cano (Opinion 21/1994); Luis Alberto Cantoral Benavides (Opinion 22/1994); Carlos Florentino Molero Coca (Opinion 24/1994); Luis Enrique Quinto Facho (Opinion 25/1994); Luis Rolo Huaman Morales, Mayela Alicia Huaman Morales, Oscar Julian Huaman Morales, Pablo Abraham Huaman Morales (Opinion 41/1994); Teodosia Cuhuaya Flores (Opinion 42/1994); Alfredo Pablo Carrillo Antayhua (Opinion 43/1994); Alfredo Raymundo Chavez, Celia Huamani Aponte, María Salomé Hualipa Peralta, Carmen Soledad Espinoza Rojas, Mebes Maliqui Rodríguez, David Aparicio Claros (Opinion 44/1994); Alfredo Carrillo Antayhua (Opinion 13/1995); Teodosia Cahuya Flores (Opinion 14/1995); Abad Aguilar Rivas, Edilberto Rivas Rojas (Opinion 17/1995); Jesús Alfonso Castiglioni Mendoza (Opinion 22/1995); Maria Elena Foronda Farro, Oscar Díaz Barboza (Opinion 23/1995); Antero Gargurevich Oliva (Opinion 24/1995); Luis Rolo Huamán Morales, Mayela Alicia Huamán Morales, Oscar Huamán Morales, Pablo Abraham Huamán Morales (Opinion 42/1995); Alfredo Raymundo Chavez, Celia Huamani Aponte, María Salomé Hualipa Peralta, Carmen Soledad Espinoza Rojas, Mebes Maliqui Rodriguez, David Aparicio Claros (Opinion 43/1995); María Elena Foronda Farro, Oscar Díaz Barboza (Opinion 44/1995); María Elena Loayza Tamayo (Opinion 46/1996); Frescia Calderón Garate

(Opinion 47/1996); Jesús Alfonso Castiglioni Mendoza (Opinion 48/1996); Mayela Alicia Huamán Morales (Opinion 49/1996); Antero Gargurevich Oliva (Opinion 22/1998); Pablo Abraham Huamán Morales (Opinion 23/1998); Carlos Florentino Molero Coca (Opinion 24/1998); Cesar Sanabria Casanova (Opinion 9/2000); Mirtha Ira Bueno Hidalgo (Opinion 10/2000); Edilberto Aguilar Mercedes (Opinion 29/2000); Jose Victoriano Acevedo Orbegozo (Opinion 10/2001).

Eight persons (10 cases) currently remain in detention following conviction:

Julio Cesar Alica Hito (Opinion 16/1995); Julio César Lapa Campos (Opinion 26/1995); Margarita M. Chuquiure Silva (Opinion 34/1996); Lori Berenson (Opinion 45/1995); Margarita M. Chuquire Silva (Opinion 25/1998); Lori Berenson (Opinion 26/1998); Sybila Arrendondo Guevara (Opinion 4/2000); Eleuterio Zárate Luján (Opinion 11/2000); Marco Sánchez Narvaez (Opinion 27/2000); Elmer Salvador Gutiérrez Vazquez (Opinion 17/2000).

There is insufficient information on 31 persons (13 cases).

34. By note verbale of 30 November 2001, the Permanent Mission of Peru to the United Nations Office at Geneva submitted the following additional information to the Working Group. In relation to Decision 18/1994, Ms. Enriqueta Laguna was acquitted and released on 12 December 1995. As regards Decision 21/1994, Mr. Julio Rondinel Cano was acquitted and released on 3 April 1998. Lastly, regarding Opinion 11/2000, Mr. Eleuterio Zárate Luján was acquitted and released on 16 May 2000.

35. The Working Group welcomes the positive action taken on these recommendations and has addressed to the Peruvian Government a further note requesting it to provide information on any reforms undertaken in relation to detention, and more particularly the special courts and laws on which the Working Group commented in its report on its mission to Peru.

II. COOPERATION WITH THE COMMISSION ON HUMAN RIGHTS

36. In various resolutions adopted at its fifty-eighth session, the Commission on Human Rights formulated requests and provided guidance to the Group.

Resolution 2001/40, "Question of arbitrary detention"

37. The Working Group has sought at all times, as requested by the Commission, to avoid duplication of efforts with other mechanisms of the Commission. With a view to improving coordination, it has informed holders of other mandates about cases brought before its attention, enabling them to intervene. The Group did so regarding its Opinion 12/2001 (Myanmar), which it transmitted both to the Special Rapporteur on the situation of human rights in Myanmar and to the Special Rapporteur on the question of torture, and regarding Opinion 13/2001 (Myanmar) which it transmitted, for appropriate action, to the Special Rapporteur on the situation of human rights in Myanmar.

38. On 42 occasions during 2001, the Working Group issued urgent appeals jointly with other thematic or country-oriented mechanisms of the Commission. In a number of cases, the Governments concerned responded favourably to these joint urgent appeals (see paras. 27 and 28 above).

Resolution 2001/47, "The right to freedom of opinion and expression"

39. In this resolution the Commission on Human Rights expresses its concern at the large number of detentions which occur in relation to the exercise of the right to freedom of opinion and expression, and the intrinsically linked rights to freedom of thought, conscience and religion, peaceful assembly and association. These detentions constitute the classic and most frequent cases of detention which the Working Group considers arbitrary in conformity with category II of its methods of work. The Group has attached particular importance to this resolution and is continuing to cooperate with the Special Rapporteur on the subject, having sent jointly with him a total of 18 appeals for urgent action to 14 Governments in 2001.

Resolution 2001/50, "Integrating the human rights of women throughout the United Nations system"

40. For a number of years the Working Group has been incorporating a gender perspective in its reports, especially for statistical purposes, as requested by the Commission in paragraphs 15, 17 and 19 of this resolution. Of the cases transmitted during the three sessions held in 2001, it should be noted that the Group issued an Opinion on only one case relating to a woman, although it did issue 10 urgent appeals relating to women and girls.

41. Pursuant to this resolution, the Working Group, during its visit to the State of Bahrain, held meetings with the authorities and representatives of various Bahraini women's associations, and with women and girls detained or accommodated in protection centres, in order to learn about the specific problems women encounter and the extent of the effect which the democratic reforms of 1999 have had on their situation (see addendum 2 to this report).

Resolution 2001/49, "Elimination of violence against women"

42. The Working Group was apprised of the fate of 23 women and 61 girls detained in nine countries, to the Governments of which it has sent urgent appeals: China (3 women); Democratic Republic of the Congo (7 women and 60 girls); Eritrea (1 woman); Honduras (3 women); Myanmar (2 women); Togo (1 woman); Turkey (4 women); United States of America (a migrant girl); and Uzbekistan (2 women). To the Group's knowledge, only three of them had been released.

Resolution 2001/55, "Rights of persons belonging to national or ethnic, religious and linguistic minorities"

43. As in previous years, the Working Group was informed of the detention of persons who had acted in defence of the rights of these minorities. The Group issued Opinion 11/2001 (Viet Nam) declaring arbitrary the detention of Thich Huyen Quang, an 83-year-old Buddhist monk, human rights defender and Patriarch of the banned Unified Buddhist Church of Viet Nam, who has, since 1982, remained under house arrest. The Group also considered the detention of Mr Gebisha Lemessa, defender of the Oromo ethnic minority in Ethiopia.

Resolution 2001/64, "Human rights defenders"

44. The Working Group remains concerned at the high number of reported arbitrary arrests and detentions of human rights defenders. It welcomes the establishment of the mandate of Special Representative of the Secretary-General on the situation of human rights defenders and has started to coordinate its activities with those of the Special Representative. In 2001, it addressed, on behalf of detained human rights defenders, 13 joint appeals with the Special Representative to the Governments of 10 countries (Cameroon, Democratic Republic of the Congo, Ethiopia, Honduras, Indonesia, Israel, Malaysia, Nepal, Sudan and Russian Federation).

Resolution 2000/86, "Human Rights and thematic procedures"

45. The Working Group draws the Commission's attention to the following situations.

1. Recourse to detention as a means of protection of victims

46. Ms. Radika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences, and Ms. Gabriela Rodríguez Pizarro, Special Rapporteur on the human rights of migrants, have raised a question of extreme importance which has a direct link with the mandate of the Working Group. It concerns recourse to detention as a means of protection of women, (and notably foreign women), victims of trafficking in the territories and countries which they have visited in the context of their respective mandates.

47. The Working Group shares the view of the Special Rapporteur on violence against women (see E/CN.4/2001/73/Add.2) concerning the need to reconsider recourse to deprivation of liberty in order to protect victims, and stresses that this measure must be supervised by a judicial authority and must in any event only be used as a last resort and when the victims themselves desire it.

2. Keeping women in detention after completion of their sentence

48. The Working Group was also informed that, in some countries, women serving a custodial sentence are kept in detention beyond the completion of their sentence, even though they have served the sentence in its entirety, and can be released only if a male member of their family presents himself to the prison authorities and stands guarantor for them.

49. The Working Group recalls that this constitutes arbitrary detention under category I of the principles applicable in the consideration of cases submitted to it. Cases of such detention must be remedied.

3. The administrative custody of foreigners

50. The Working Group has had occasion to set out, in its report for 1999 (E/CN.4/1999/63), its position concerning the administrative custody of foreigners, which is a source of concern to the Special Rapporteur on the human rights of migrants.

4. House arrest

51. The Working Group has set out its position on house arrest in its deliberation No. 1 (see E/CN.4/1993/24).

5. Psychiatric detention

52. The Working Group expressed its opinion on this question for the first time at its thirty-second session when it was considering a communication. It decided to consider all aspects of the question at its next session, notably in consultation with the World Health Organization (WHO) and after reading the report "Principles, guidelines and guarantees for the protection of persons detained on grounds of mental ill-health or suffering from mental disorder", which was submitted to the Sub-Commission by Ms. Erica-Irene A. Daes, Special Rapporteur.

53. When establishing its methods of work at its first session in 1991, the Working Group deliberately refrained from taking a position on measures involving the deprivation of liberty of persons suffering from mental disorder and requiring placement in a closed establishment. It decided to take a position only on the basis of specific situations that might be brought before it.

54. This was the case, for the first time, at its thirty-second session. Considering this precedent, the Working Group decided, in the light of its deliberation No. 1 relating to house arrest:

(a) That psychiatric detention (as an administrative measure) may be regarded as comparable to deprivation of liberty within the meaning of the Working Group's mandate when the person concerned is placed in a closed establishment which he may not leave freely;

(b) That this measure may be of an arbitrary character when it is not accompanied by procedural guarantees under judicial control and/or it may have the aim of neutralizing or discrediting the person concerned, in order to limit or jeopardize his freedom of expression.

55. The Working Group decided to include this question on the agenda for its thirty-third session with a view to possibly adopting a deliberation on the question, after having consulted the specialized governmental or non-governmental organizations, notably WHO.

56. In all the situations mentioned in paragraphs 45 to 55 above, the Working Group considered that when these measures are executed in closed premises which the person concerned is unable to leave freely, they are to be regarded as constituting deprivation of liberty within its mandate. However, as to the arbitrary character or otherwise of this deprivation the Group will continue to express an opinion on a case-by-case basis.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

57. Acceptance, transparency and cooperation in the context of requests for country visits are the surest way to further the cause of human rights by developing mutual respect and understanding between States and United Nations human rights mechanisms.

58. Deprivation of liberty in all its manifestations requires the Working Group to take *suo motu* initiatives and formulate principles and methods of work to combat arbitrariness.

59. Timely responses with full disclosure from States further the cause of objectivity in rendering opinions; responses by States after an opinion is adopted generate misunderstandings.

B. Recommendations

Recommendation 1: Imprisonment related to insolvency

60. The Working Group requests Governments to reduce to the fullest extent possible cases of detention caused by situations of extreme poverty. It accordingly recommends that measures should be taken in the following areas:

(a) Repeal of enactments providing for imprisonment for contractual debt, which is prohibited by article 11 of the International Covenant on Civil and Political Rights;

(b) Necessary measures, including in the area of training, to ensure that judges take the greatest possible account of the level of income of persons who are released on bail in order to give full effect to the principle that release must be the rule and provisional detention the exception (Covenant, art. 9 (3));

(c) Ensure that the amounts of fines, which are in principle intended to limit penalties of imprisonment, are not disproportionate to the income of the convicted persons concerned, so as to prevent these persons from eventually being imprisoned on account of their inability to pay the fine.

Recommendation 2: Detention as a means of protection of victims

61. Recourse to deprivation of liberty in order to protect victims must be reconsidered and, in any event, must be supervised by a judicial authority. This measure must be used only as a last resort and when the victims themselves desire it.

Annex

STATISTICS

(Covering the period January-December 2001. Figures in parentheses are corresponding figures from last year's report)

A. Cases of detention in which the Working Group adopted an opinion regarding their arbitrary or non-arbitrary character

1. Cases of detention declared arbitrary

	Female	Male	Total
Cases of detention declared arbitrary falling within category I	0 (0)	1 (3)	1 (3)
Cases of detention declared arbitrary falling within category II	0 (3)	20 (36)	20 (39)
Cases of detention declared arbitrary falling within category III	1 (7)	25 (42)	26 (49)
Cases of detention declared arbitrary falling within categories II and III	0 (1)	0 (1)	0 (2)
Cases of detention declared arbitrary falling within categories I and II	0 (0)	1 (0)	1 (0)
Cases of detention declared arbitrary falling within categories I and III	0 (0)	1 (5)	1 (5)
Cases of detention declared arbitrary falling within categories I, II and III	0 (0)	0 (1)	0 (1)
Total number of cases of detention declared arbitrary	**1 (11)**	**48 (87)**	**49 (98)**

2. Cases of detention declared not arbitrary

Female	Male	Total
0 (0)	7 (1)	7 (1)

B. Cases which the Working Group decided to file

	Female	Male	Total
Cases filed because the person was released, or was not detained	0 (0)	32 (15)	32 (15)
Cases filed because of insufficient information	0 (0)	5 (0)	5 (0)

C. Cases pending

	Female	Male	Total
Cases which the Working Group decided to keep pending for further information	0 (0)	1 (0)	1 (0)
Cases transmitted to Governments on which the Working Group has not yet adopted an opinion	4 (2)	69 (49)	73 (51)
Total number of cases dealt with by the Working Group during the period January-December 2001	**5 (13)**	**162 (151)**	**167 (164)**